

WORK SESSION AGENDA REQUEST

Sponsor:

Raymond E. Graham, Cedar Run District
Supervisor

Board of Supervisors Meeting Date:

January 11, 2007

Staff Lead:

W. Todd Benson, Assistant Zoning
Administrator

Department:

Community Development

Topic:

A Work Session to Discuss a Zoning Ordinance Text Amendment to Sections 3-301 and 5-105 to Change the Square Footage and Availability of Accessory Family Dwelling Units

Topic Description:

This proposed text amendment was initiated by Lee and Donna Smith. It raises the square footage of a family dwelling unit from 1,400 square feet to 1,600 square feet, redefines how gross floor area is calculated, expands the number of occupants allowed in a family dwelling unit (from 5 to unlimited), changes the required time for family usage from ten to two years, and permits both units to become rental units after two years. An alternative, based upon comments by the Board of Supervisors, changes the concept from a family dwelling unit to an accessory dwelling unit with different standards.

At its meeting of December 14, 2006, the members of the Board expressed a desire to vote down the Smith proposal but continue to work on their alternative. In response to a request from Mr. Smith that the Board deals with his proposal when it took final action, the Board did not vote on the Smith proposal. The Board did vote to conduct a work session on their alternative on January 11, 2007. Among other things, Chairman Graham has specified an interest in discussing leaving the second house as a "family dwelling" and requiring family usage for at least five years.

Although the Smith proposal is not the subject of the work session, it is appended to this Agenda for convenience and reference as and if necessary.

Requested Action of the Board of Supervisors:

Conduct a work session on the alternative proposal concerning accessory family dwelling units.

Financial Impact Analysis:

No financial impact analysis has been conducted.

Summary Staff Report:

Prior Text Amendment:

For many years, Fauquier County permitted family dwelling units as accessory structures on a lot. In August, 2005 the Board of Supervisors initiated a text amendment to liberalize the restrictions on such units. This amendment was at the request of Lee Smith who wanted to build a family home for one of his children and family. The Board of Supervisors' proposed text amendment, as initiated: (1) increased the size of the second home from 1,200 square feet to 1,600 square feet; (2) allowed the owner to occupy the smaller second house while permitting a close family member to reside in the principal structure; (3) removed the current occupancy cap (3 people) for use of the second home; (4) eliminated the prohibition on charging rent for the second unit during the first two years (an owner may want or need to charge his family member rent); and (5) extended the period in which immediate family must occupy the second house from two to five years.

The Planning Commission held a work session on this issue on September 27, 2005 and public hearings on August 25, 2005 and September 29, 2005. By a vote of 4 – 1, the Planning Commission recommended approval of a significantly different amendment. The Planning Commission was troubled by the Board of Supervisors' proposed increase in size of the house to 1,600 square feet. It believed that a second home should clearly be subordinate to the existing home. Accordingly, the Planning Commission recommended that the size of the accessory family dwelling be limited as follows: **“Such a unit shall contain no more than 1200 square feet of gross floor area. may be 600 square feet in gross floor area or 25 % of the gross floor area of the existing house, which ever is larger, but in no circumstance may the family dwelling unit exceed 1,200 square feet of gross floor area.”** The Planning Commission also was concerned by unlimited occupancy of the family dwelling unit. It recommended that the occupancy be increased to four. Finally, the Planning Commission believed that family occupancy should be similar to family subdivisions and have a ten year holding period before it could be used as a third party rental unit.

The Board of Supervisors rejected the Planning Commission's recommendation as to size and occupancy limits. It adopted a maximum size of 1,400 square feet and increased permitted occupancy to five. The Board of Supervisors concurred with the ten year holding period by close relatives. The Smiths opted not to take advantage of the new ordinance; rather, they kept their permit alive under the prior law.

This proposed text amendment by the Smiths raises the square footage of a family dwelling unit from 1,400 square feet to 1,600 square feet, redefines what is included in calculating the gross floor area, expands the number of occupants allowed in a family dwelling unit (from five to no limit), and reduces the required time for family usage from ten to two years. The square

footage and capacity limits are the same as those originally initiated by the Board of Supervisors.

Requirements of Other Counties:

For comparison, staff surveyed the conditions imposed by other counties on second dwellings. Among the jurisdictions surveyed, Fauquier County is the most liberal regarding size and options.

Rappahannock County limits a second dwelling to 1,200 total square feet of combined living and storage space. Storage space shall include basements, garages, crawl spaces of five feet or greater in height and attic spaces not constructed of trusses with a pitch of nine to twelve (9:12) or greater. Carports are excluded from storage space calculation unless it is planned to be enclosed in the same at a later date; if excluded, then carports may not be enclosed later. Such use may be in a separate building constructed specifically for the use. Further, excluding renovation of existing structures, no such family apartment shall be more than 200 feet from the main residence, except upon a written finding by the BZA, to be recorded in the permit, that exceptional topographic conditions exist on the site (or that a negative impact on adjacent properties may be mitigated), such that varying this limit shall not act to the detriment of the public interest, upon which finding the BZA may grant such separation as it deems appropriate. No family apartment shall utilize a separate entrance to the property unless such entrance is already in existence. For apartments to be constructed in existing accessory buildings, the amount of living space shall be no more than 1,000 square feet and the limitation on enclosed utility/storage/accessory space shall not apply. In no case shall accessory space be converted to residential occupancy, and the BZA is empowered to impose such conditions as will render such conversion unlikely, including but not limited to floor plans, means of ingress/egress, etc. The apartment may not be rented to anyone other than a family member for a period of two years following completion thereof. There shall be no more than one family apartment per separate parcel of land.

Warren County does not allow second dwellings for full time residents. Only guest houses are permitted.

Stafford County allows accessory dwellings, unrestricted to family members – anyone may occupy. However, rent is prohibited except rent paid by family member occupants. Only one accessory dwelling per lot is allowed and the accessory dwelling can be no larger than twenty-five percent of the gross floor area of the principal structure. If this rule applied in Fauquier County, the Smiths would be allowed an accessory dwelling of approximately 600 square feet.

Culpeper County permits accessory dwellings. Such dwellings are restricted to twenty-five percent of the gross floor area of the principal dwelling. Attached apartments may be the larger of thirty percent of the gross floor area or one thousand square feet.

Clarke County allows accessory guest cottages of six hundred square feet. The house may be no more than three hundred feet from the principal dwelling. They may be rented.

Madison County only allows accessory dwellings when the parcel is large enough to be divided into two lots. The structure must meet the same requirements (set backs, well and septic, etc.) as the principal structure.

Orange County only allows accessory dwellings in cases of medical emergencies. A special permit may be issued for six months and reauthorized for up to two years. Continuation after two years requires a variance.

Other Accessory Housing Provisions:

Note that Fauquier County also permits, by right, efficiency apartments. Under the Zoning Ordinance, efficiency apartments are subject to the following standards: (1) Such a unit shall not be occupied by more than two persons; (2) Not more than one such unit shall be located on a lot; (3) Such a unit shall contain no more than 600 square feet of gross floor area or 25% of the total gross floor area of the dwelling, whichever is greater; (4) Such a unit shall be located only on the same lot as the residence of the owner of the lot; and (5) Architectural features of such a unit shall conform with the single family character of the neighborhood (e.g., no additional front doors).

Fauquier County also permits quarters for a caretaker, watchman, or tenant farmer but only in the rural districts at a density not to exceed one unit per fifty acres. These houses are unrestricted as to size and occupancy.

Affordable Housing:

The Smiths promote this amendment as a means of alleviating a housing crisis in Fauquier County. The fair market rental for a two-bedroom unit in Fauquier County is \$1,225, and the annual income required to make this unit affordable as \$49,000.

A study prepared by the Rappahannock Rapidan Regional Commission Workforce Housing Working Group reports that in 2004, the median housing sales price in Fauquier County was \$347,000. The income required, per the report, to purchase a house at that price was \$80,000. Based on this analysis, 95% of the full-time permanent employees of Fauquier County General Government, at FY 2007 salary levels, cannot afford (based on their individual salaries) to purchase a home in Fauquier County at the 2004 median housing sales price. In May of 2006, the Fauquier Democrat reported that the average home price in Fauquier County is now \$508,000.

Family housing units are recognized as a way of alleviating a shortage of affordable housing, not only for the renter but also for the owner who now has supplemental income to apply against rising mortgage, insurance, and tax costs. A plus side of this method (using second dwellings for rental units), as opposed to proffers or other means of securing affordable units, is that the program is free of government monitoring and bureaucratic control. It is market driven. The process runs itself.

The Smiths' proposal begs the question of whether their proposed amendments will encourage

the building of more family dwelling units. Twenty-three were built in 2004. Fourteen were built in 2005. As of today, fourteen have been built in 2006.

The Board of Supervisors may want to consider dropping the requirement that such second units be for family members. Certainly, there are childless couples who would want the benefit of renting to a person or young couple for myriad reasons. At present, childless couples can build efficiency apartments that can be even larger than family dwelling units. These apartments, however, are limited to two individuals and must be in the principal house.

This proposed text amendment was initiated by the Smiths. A copy of their transmittal letter is attached. On July 27, 2006, the Planning Commission conducted a work session on the proposed amendment. A public hearing also was held on July 27, 2006. After closing the Public Hearing, the Planning Commission voted to conduct a second work session on August 31, 2006. During the work session, the Planning Commission separately discussed each of the Smiths' amendments to determine if there was any consensus or majority on any item. On each item, the Planning Commission found they could not support the changes. Members of the Planning Commission did note that affordable housing is an issue that warrants their attention but felt that this was not the vehicle for addressing that issue. At its regular 4:00 p.m. meeting, the Planning Commission unanimously voted to recommend denial.

The Board of Supervisors conducted a public hearing on October 12, 2006. Several Board members indicated an interest to slightly alter the existing family dwelling unit provisions; for example, to: (1) substitute "tenant" or something similar in lieu of "family" dwelling unit; (2) remove porches eight feet or less in depth as an element required in calculating the unit's gross floor area; (3) allow 1,600 square foot tenant dwelling units in Rural Agriculture (RA) and Rural Conservation (RC) districts, while such units in all other residential districts will be restricted to the existing 1,400 square feet threshold; and (4) require well and independent drainfield site provisions must be met. Such changes will require the Board of Supervisors to direct staff to re-advertise the revised text amendment for public hearing. In response to these comments, an alternative ordinance is attached for consideration.

Upon reviewing the alternative draft, Supervisor Graham expressed his desire to not require independent well and septic. Rather, he believes that well and septic requirements should abide with the Health Department. Accordingly, he may move to change Subsection 5 of the alternative proposal in the following manner: **Accessory dwelling units shall have separate water and sewage systems, including, in non-sewered areas, drainfield reserves. in accordance with Health Department regulations.**

Identify any other Departments, Organizations or Individuals that would be affected by this request:

Department of Economic Development

Smith Proposal

ORDINANCE

A ZONING ORDINANCE TEXT AMENDMENT TO SECTION 5-105 TO CHANGE THE SQUARE FOOTAGE OF ACCESSORY FAMILY DWELLING UNITS AND TO ESTABLISH PERMITTED OCCUPANCY

WHEREAS, this text amendment was initiated by Lee E. Smith and Donna G. Smith on May 30, 2006, and

WHEREAS, on August 31, 2006, after a public hearing, the Planning Commission forwarded the proposed text amendment to the Board of Supervisors unanimously recommending denial; and

WHEREAS, on October 12, 2006, the Fauquier County Board of Supervisors held a public hearing on this amendment; and

WHEREAS, the adoption of this text amendment would be in the spirit of the Zoning Ordinance, consistent with public convenience, general welfare, and good zoning practices, consistent with the adopted Comprehensive Plan, and is in the best interest of the citizens of Fauquier County; now, therefore, be it

ORDAINED by the Fauquier County Board of Supervisors this 14th day of December 2006, That Section 5-105 be, and is hereby, amended as follows:

5-105 Standards for an administrative permit for a Family Dwelling Unit

1. Such a unit shall ~~not~~ be occupied **only by family members** ~~more than five (5) persons,~~ at least one of whom must be the natural or adopted parent, grandparent, child, grandchild, brother or sister of the owner and occupant of the single family residence on the same lot. Or, the lot owner may live in the family dwelling unit and allow such family members to reside in the main house. ~~In either case, the lot owner must reside on the property.~~
2. Such a unit may be ~~4,400~~ **1,600** square feet of gross floor area. **Porches, breezeways, decks, garages and mechanical rooms shall not be included in gross floor area.**
3. No dwelling units other than the principal structure (a single family dwelling) and one such family dwelling unit shall be located on one lot.
4. ~~For ten years, the two structures must be occupied only by the owner(s) and those identified in Paragraph 1. If the Board of Supervisors finds that an extraordinary hardship is being caused by~~

~~the ten-year limitation, it may be reduce the time period to alleviate the hardship.~~ **It shall be unlawful for rent to be charged to the occupancy of such a unit for two (2) years following the date it passes final inspection by the County Building Official.**

5. When such a unit is no longer needed by a member of the owner's family and the ~~ten~~ **two** year period described in Paragraph 4 has expired, ~~one unit, but not both,~~ **the unit** can be considered a nonconforming use and as such can be rented to anyone.

Lee E. Smith/Donna G. Smith
6179 Beach Road
Midland, VA 22728

May 30, 2006

Ray Graham
Chairman, Cedar Run District
Fauquier County Board of Supervisors
10 Hotel Street
Warrenton, Virginia 20186

RE: Family Dwelling Unit Zoning Ordinance Text Amendment - Section 5-105
Standards for an administrative permit for a Family Dwelling Unit

Dear Mr. Graham,

Housing for families is at a crisis in Fauquier County. There has been little or no family housing for under \$150,000 constructed in Fauquier County for four or more years. The average cost of housing in Fauquier County is now \$400,000 or more. Taxes have just gone up 35% or more due to growth. However, nearly all growth has been for expensive homes. The family must pay the tax burden for the growth but has no part in it.

The Family Dwelling Unit zoning provision is an existing solution to this problem. However, the current ordinance creates hardships on the family. It is patently unfair to impose severe restrictions on the Fauquier Family that do not exist for the new developments. New developments and family home construction all accomplish the same thing: homes for people to live in. We want the playing field to be slightly more equal.

Families come in different sizes. The Uniform Building Code regulates occupancies. We are proposing that the Family Dwelling Unit be modified to retain the family restriction but leave occupancy regulation to the Uniform Building Code.

Additionally, we need a little more square footage. There is no prevailing community need to severely restrict square footage. Furthermore, we need to remove the arbitrary inclusion of porch space as interior space by the Zoning Administrator.

Finally, there is no compelling community need to reduce the economic value of our property when we want to take care of family. Prior to current revisions, there was a two year economic restriction imposed on the family property. I am proposing that we return to the two year period.

Attached is our proposed zoning ordinance text amendment and the associated \$500 processing fee. There is widespread community support for these proposed changes.

Thank you for your time and consideration in this matter.

Sincerely yours,

Lee E. Smith/Donna G. Smith

Alternative Proposal

ORDINANCE

A ZONING ORDINANCE TEXT AMENDMENT TO SECTION 5-105 TO CHANGE THE SQUARE FOOTAGE OF ACCESSORY FAMILY DWELLING UNITS AND TO ESTABLISH PERMITTED OCCUPANCY

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ORDAINED by the Fauquier County Board of Supervisors this 14th day of December 2006, That Sections 3-301 and 5-105 be, and are hereby, amended as follows:

See Page III-4 for Key																		
	SITE PLAN	RC	RA	RR-2	V	R-1	R-2	R-3	R-4	TH	GA	MDP	C-1	C-2	C-3	CV	I-1	I-2
3-301 RESIDENTIAL USES (CATEGORY 1)																		
1. Residential Development																		
a. Dwelling, Single Family Detached		P	P	P	P	P	P	P	P	P			SP			SP		
b. Dwelling, Single Family Attached	X	SE C	SE C	SE C	SE C	C	C	C	C	P	P							
c. Dwelling, Multi-Family	X									P	P							
d. Dwelling above Commercial	X												SE					
3. Dwelling, Manufactured		A	P**	A	A	A	A	A	A			P (1)						
4. Apartment, Efficiency		A	A	A	A	A	A	A	A		P							
5. <u>Dwellings, Accessory</u>		A	A	A	A	A	A	A	A									
6. Dwelling Duplex		SE	SE	SE	SE	SE	SE	SE	SE									
(1) Site plan required																		

5-105

Standards for an administrative permit for an Family Accessory Dwelling Unit

- Such a-unit~~s~~ shall be limited in occupancy pursuant to Section 2-502 ~~shall not be occupied by more than five (5)~~

~~persons., at least one of whom must be the natural or adopted parent, grandparent, child, grandchild, brother or sister of the owner and occupant of the single family residence on the same lot. Or, the lot owner may live in the family dwelling unit and allow such family members to reside in the main house. In either case, The lot owner must reside on the property.~~

2. Such a unit may be up to **1,600 square feet of gross floor area in the Rural Agriculture and Rural Conservation District** and 1,400 square feet of gross floor area **in all other districts.** **Notwithstanding other provisions of this ordinance, porches eight feet in depth or less shall not be calculated as part of the gross floor area.**
3. No dwelling units other than the principal structure (a single family dwelling) and one such family dwelling unit shall be located on one lot, **except that lots eligible for tenant houses pursuant to Section 6-102.14 may have multiple tenant houses to include an accessory unit under this provision in lieu of one of the allowed tenant houses.**
- ~~4. For ten years, the two structures must be occupied only by the owner(s) and those identified in Paragraph 1. If the Board of Supervisors finds that an extraordinary hardship is being caused by the ten-year limitation, it may be reduce the time period to alleviate the hardship.~~
- ~~45. When such a unit is no longer needed by a member of the owner's family and the ten-year period described in Paragraph 4 has expired, **The lot owner must reside on the property.** One unit, but not both, can be considered a nonconforming use and as such can be rented to anyone.~~
5. **Accessory dwelling units shall have separate water and sewage systems, including, in non-sewered areas, drainfield reserves.**